

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 22 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

CHAMANBHAI CHHAGANBHAI RAVAL

Versus

MENABEN WD/O KALAJI MOTIJI THAKORE

Appearance:

MR RAJNI H MEHTA for Petitioners

MR S C SHAH for Respondent No. 1, 2, 3, 4, 5

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 16/06/1999

ORAL JUDGEMENT

The appellant No.1, the driver, appellant No.2,
the owner of motor truck bearing No.GTE 8163 and the
appellant No.3-The Oriental Fire and General Insurance
Company Ltd. with whom the truck was insured, have filed
this appeal under Section 110-D of the Motor Vehicles
Act, 1939 challenging the judgment and award passed by
the Motor Accident Claims Tribunal (Main), Narol in Motor

2. The respondents are the legal heirs and representatives of the deceased Kalaji Motiji, who died in vehicular accident on January 14, 1981. On the night of 14th January, 1981, the deceased Kalaji who was working as a loader in the offending truck, was travelling in the said truck. The truck was driven in rash and/or negligent manner by the appellant No.1. The said truck was loaded with vegetables. When it reached near Mubarakpura around 8.15 p.m, the driver suddenly applied brake, as a result of which the deceased Kalaji was thrown on the road. The deceased sustained head injuries and was rushed to the Civil Hospital at Gandhinagar, where he was admitted as indoor patient. The deceased Kalaji succumbed to brain injuries on 18.1.1981.

3. The respondent No.1, who is the widow of the deceased whereas respondent No.2, 3 and 4 who are children of the deceased and the respondent No.5 who is the widowed mother of the deceased Kalaji filed M.A.C Petition No.82/81 in the M.A.C.Tribunal, Ahmedabad (Rural) claiming compensation of Rs. 1,00,000/-.

4. The appellants No.1 and 2 filed written statements, inter-alia, contending that the driver of the truck was not responsible for the death of the deceased Kalaji. However, it was admitted that the deceased was working as loader in the said truck. The appellant No.3 filed his reply at Exh.19 wherein it was admitted that the truck in question was insured with the Insurance Company and third party risk was covered by the Insurance Company. It was pleaded that the claimants were not entitled to claim such a huge amount of compensation.

5. The Tribunal, after raising issues at Exh.24, held that the accident in question had taken place due to rash and/or negligent driving by the driver of the offending truck. On the question of calculation of compensation, the Tribunal held that the deceased Kalaji was earning a total amount of Rs.8,000/- per year out of agricultural income and income as loader in the said truck. The Tribunal deducted Rs.2000/- towards the expenses incurred by the deceased and assessed Rs.6000/towards dependency benefit of the deceased. Keeping in mind the income of the deceased, applied multiplier of 15 and awarded Rs.90,000/- towards loss of dependency benefit to the claimants-respondents. The Tribunal further awarded an amount of Rs.5,000/- towards loss of expectation of life of Rs.5,000/- under the head,

pain, shock and suffering. On the whole, the Tribunal awarded a total amount of Rs. 1,00,000/- to the respondents as compensation for the untimely death of the deceased Kalaji with interest @ 6% per annum from the date of filing of application or realisation. The appellants have challenged the award as stated above, by filing this appeal under Section 110-D of the Motor Vehicles Act, 1939.

6. I have heard the learned Counsel for the appellants Mr A R Mehta and the learned Counsel for the respondents Mr Sandeep C Shah. The Counsel for both the sides have taken to the entire evidence produced on the record.

7. The learned Counsel for the appellants submitted that the award of the Tribunal is on a higher side and the Tribunal erred in holding that the deceased was earning Rs.8,000/- per year out of agricultural income and income as loader in the truck. He submitted that the original claimants have not led sufficient evidence in support of their claim that the deceased was having agricultural income of Rs.6,000/- per year. It is submitted by the learned Counsel for the appellant that due to death of the deceased Kalaji, the income from the agricultural work is not ceased and the claimants can employ labourers to carry out the agricultural operations. It is lastly submitted by the learned Counsel for the appellants that the award of the Tribunal is excessive and it requires to be modified.

8. Learned Counsel for the respondents Mr Sandeep C Shah has vehemently argued that the award of the Tribunal is not excessive and no interference is called for by this Court. It is submitted that the deceased Kalaji was earning substantial amount from the agricultural work and the deceased was the only bread-earner in the family and because of the sad untimely demise of the deceased, the family had lost the bread-earner for which the Tribunal has compensated adequately to the claimants, and therefore, the appeal deserves to be dismissed.

9. The widow of the deceased namely; Menaben Kalaji was examined before the Tribunal and from her evidence it is evident that the deceased was earning as a loader Rs.10/- to Rs.12/- per day. She has further stated that the deceased was earning income from the agricultural operation of Rs.6,000/- to Rs.7,000/- per year. However, it requires to be noted that no documentary evidence was produced by the claimant in support of the case with regard to the income of the deceased. In my opinion,

looking to the facts and circumstances of the case, the income of the deceased from agricultural work as well as from his work as loader, can be assessed as Rs.7,000/per year. Therefore, the Tribunal's finding that the deceased was earning Rs.8,000/- per year requires to be modified. Taking the family as representing 8 units which is arrived at by the Tribunal, (2 units for Kalaji himself) in my opinion, the amount of Rs.2,000/- will have to be reduced from the amount of Rs.7,000/- which was the annual income of the deceased. Therefore, the dependency benefit of the applicant from the income of Kalaji, the deceased would come to Rs.5000/- per year. Looking to the age of the deceased, a multiplier of 15 would be just and proper. Applying the multiplier of 15 to the annual datum figure, the total loss of dependency benefit suffered by the claimant respondent would come to Rs.75,000/-. Further, the claimants would be entitled a sum of Rs.10,000/towards the loss of expectation of life for the untimely death of the deceased Kalaji. It is admitted fact that the accident in question had taken place on January 14, 1981 and the deceased succumbed to injuries on January 18, 1981. The deceased must have suffered pain, shock and suffering during these days, and therefore, the Tribunal has rightly awarded Rs.5,000/under the head pain, shock and suffering. As a result of the foregoing discussion, in my opinion, the claimant-respondents would be entitled to compensation as under:

Loss of dependency benefit : Rs.75,000/-

Loss of expectation of life: Rs.10,000/-

Under the head pain, and

shock : Rs. 5,000/-

Rs.90,000/-

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The award of the Tribunal, is therefore, modified to the extent that instead of Rs. 1,00,000/- the claimant would be entitled to compensation of Rs.90,000/- with interest @ 6% per annum from the date of filing of application till realisation. The apportionment of the awarded amount done by the Tribunal will be calculated on the pro-rata basis. The order of investment and disbursement as done by the Tribunal shall be made on the same pro-rata basis. The appeal is partly allowed. The award be drawn in terms of this judgment. There shall be no order as to costs in this appeal.

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msp.